

House Resolution 74

By: Representative Franklin of the 43rd

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Georgia so as to remove the
2 power of the Judicial Qualifications Commission to remove and discipline judges; to provide
3 that actions by the commission shall be advisory only; to provide that the power to remove
4 and discipline judges is vested exclusively in the elected General Assembly; to provide for
5 submission of this amendment for ratification or rejection; and for other purposes.

6 BE IT RESOLVED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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8 Article VI, Section VII of the Constitution is amended by revising Paragraphs VI, VII, and
9 VIII as follows:

10 "Paragraph VI. ***Judicial Qualifications Commission; power; composition.*** The power
11 to discipline, remove, and cause involuntary retirement of judges shall be vested in the
12 General Assembly acting through its impeachment power. The Judicial Qualifications
13 Commission may recommend such actions to the General Assembly. It The commission
14 shall consist of seven members, as follows:

15 (1) Two judges of any court of record, selected by the Supreme Court;

16 (2) Three members of the State Bar of Georgia who shall have been active status
17 members of the state bar for at least ten years and who shall be elected by the board of
18 governors of the state bar; and

19 (3) Two citizens, neither of whom shall be a member of the state bar, who shall be
20 appointed by the Governor.

21 Paragraph VII. ***Discipline, removal, and involuntary retirement of judges.*** (a) Any
22 judge may be removed, suspended, or otherwise disciplined by the General Assembly
23 through its power of impeachment for willful misconduct in office, or for willful and
24 persistent failure to perform the duties of office, or for habitual intemperance, or for
25 conviction of a crime involving moral turpitude, or for conduct prejudicial to the
26 administration of justice which brings the judicial office into disrepute. ~~Any~~ The General
27 Assembly may likewise under the same procedures retire any judge ~~may be retired~~ for

disability which constitutes a serious and likely permanent interference with the performance of the duties of office. The Supreme Court shall adopt rules of implementation for the Judicial Qualifications Commission to recommend such actions to the General Assembly.

(b)(1) Upon indictment for a felony by a grand jury of this state or by a grand jury of the United States of any judge, the Attorney General or district attorney shall transmit a certified copy of the indictment to the Judicial Qualifications Commission. The commission shall, subject to subparagraph (b)(2) of this Paragraph, review the indictment, and, if it determines that the indictment relates to and adversely affects the administration of the office of the indicted judge and that the rights and interests of the public are adversely affected thereby, the commission shall recommend that the General Assembly suspend the judge immediately and without further action pending the final disposition of the case or until the expiration of the judge's term of office, whichever occurs first. During the term of office to which such judge was elected and in which the indictment occurred, if a nolle prosequi is entered, if the public official is acquitted, or if after conviction the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the judge shall be immediately reinstated to the office from which he or she was suspended. While a judge is suspended under this subparagraph and until initial conviction by the trial court, the judge shall continue to receive the compensation from his or her office. After initial conviction by the trial court, the judge shall not be entitled to receive the compensation from his or her office. If the judge is reinstated to office, he or she shall be entitled to receive any compensation withheld under the provisions of this subparagraph. For the duration of any suspension under this subparagraph, the Governor shall appoint a replacement judge. Upon a final conviction with no appeal or review pending, the office shall be declared vacant and a successor to that office shall be chosen as provided in this Constitution or the laws enacted in pursuance thereof.

(2) The commission shall not review the indictment for a period of 14 days from the day the indictment is received. This period of time may be extended by the commission. During this period of time, the indicted judge may, in writing, authorize the commission to suspend him or her from office. Any such voluntary suspension shall be subject to the same conditions for review, reinstatement, or declaration of vacancy as are provided in this subparagraph for a nonvoluntary suspension.

~~(3) After any suspension is imposed under this subparagraph, the suspended judge may petition the commission for a review. If the commission determines that the judge should no longer be suspended, he shall immediately be reinstated to office.~~

(4) (3) The findings and records of the commission and the fact that the public official has or has not been suspended shall not be admissible in evidence in any court for any purpose. The findings and records of the commission shall not be open to the public.

~~(5) The provisions of this subparagraph shall not apply to any indictment handed down prior to January 1, 1985.~~

(6) (5) If a judge who is suspended from office under the provisions of this subparagraph is not first tried at the next regular or special term following the indictment, the suspension shall be terminated and the judge shall be reinstated to office. The judge shall not be reinstated under this provision if he or she is not so tried based on a continuance granted upon a motion made only by the defendant.

(c) Upon initial conviction of any judge for any felony in a trial court of this state or the United States, regardless of whether the judge has been suspended previously under subparagraph (b) of this Paragraph, such judge shall be immediately and without further action suspended from office. While a judge is suspended from office under this subparagraph, he or she shall not be entitled to receive the compensation from his or her office. If the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the judge shall be immediately reinstated to the office from which he or she was suspended and shall be entitled to receive any compensation withheld under the provisions of this subparagraph. For the duration of any suspension under this subparagraph, the Governor shall appoint a replacement judge. Upon a final conviction with no appeal or review pending, the office shall be declared vacant and a successor to that office shall be chosen as provided in this Constitution or the laws enacted in pursuance thereof. ~~The provisions of this subparagraph shall not apply to any conviction rendered prior to January 1, 1987.~~

Paragraph VIII. ***Due process; review by Supreme Court inherent power of the General Assembly.*** (a) No ~~action~~ recommendation by the commission shall be ~~taken~~ made against a judge except after hearing and in accordance with due process of law. ~~No removal or involuntary retirement shall occur except upon order of the Supreme Court after review.~~ (b) Nothing in Paragraphs VI and VII of this section shall limit the inherent power of the General Assembly to exercise the power of impeachment without recommendation by the Judicial Qualifications Commission."

SECTION 2.

The above proposed amendment to the Constitution shall be published and submitted as provided in Article X, Section I, Paragraph II of the Constitution. The ballot submitting the above proposed amendment shall have written or printed thereon the following:

99 "() YES Shall the Constitution of Georgia be amended so as to provide that the
100 power to remove and discipline judges is vested exclusively in the elected
101 () NO members of the General Assembly?"

102 All persons desiring to vote in favor of ratifying the proposed amendment shall vote "Yes."
103 All persons desiring to vote against ratifying the proposed amendment shall vote "No." If
104 such amendment shall be ratified as provided in said Paragraph of the Constitution, it shall
105 become a part of the Constitution of this state.